



James J. R. Talbot
Senior Attorney

Room 3A230
One AT&T Way
Bedminster, New Jersey 07921-0752
908 532-1847
FAX 908 532-1218
EMAIL jjtalbot@att.com

March 3, 2003

Donald Abelson
Chief
International Bureau
Federal Communications Commission
445 12th Street, SW,
Washington, DC 20554

**Re: AT&T Emergency Petition for Settlements Stop Payment Order,
IB Docket No. 03-38.**

Dear Mr. Abelson:

This letter responds to the letter dated February 27, 2003 from the Philippine Long Distance Telephone Company ("PLDT") concerning the 50 percent price increase requested by PLDT and the other Philippine carriers. It also responds to certain claims not otherwise addressed in AT&T's petition or reply comments made in the reply comments filed on February 27, 2003 by Globe Telecom, Inc. ("Globe") and Digital Telecommunications Philippines, Inc. ("Digitel") and in the comments filed on February 26, 2003 by Bayan Telecommunications Company (Bayantel").

PLDT offers no reasonable explanation for the concerted actions by the Philippine carriers to increase rates and to block traffic of U.S. carriers that resist their demands. PLDT also conspicuously ignores the agreements on international rates revealed by the January 29, 2003 SEC filing by Globe Telecom, Inc. ("Globe"), which also suggest that the Philippine carriers have acted in concert to raise international rates.

No "conscious parallelism"

The facts show much more than mere "parallel behavior" among the Philippine carriers that is no different from the price leadership that may occur in competitive markets. Unlike the price changes that may occur in response to public announcements of price changes, negotiations on international termination rates are conducted on a bilateral and *confidential* basis and carriers do not make their rate requirements public, as PLDT acknowledges on page 2 of its letter (claiming to be "not privy" to negotiations and agreements involving other carriers).

Because of the secret nature of international rate negotiations, the facts here cannot be dismissed as mere “conscious parallelism.” PLDT, Globe, Bayantel and Digitel demanded the exact same 50 percent rate increase in confidential communications with AT&T in the same period in November 2002, demanded that the increase become effective on the exact same date, which was initially January 1, 2003, and then was postponed to February 1, 2003, and have now taken the exact same retaliatory measures against AT&T by blocking circuits and traffic. This concerted conduct to obtain and enforce the same rate increase clearly excludes the possibility of independent action.

PLDT offers no explanation for -- and does not even mention -- the agreements among Philippine carriers revealed by Globe’s January 30, 2003 filing with the SEC, under which Globe has agreed with PLDT, Smart, Bayantel, Digitel and other Philippine carriers that from February 1, 2003 “calls passing through an IGF [international gateway facility] terminating to an LEC [local exchange carrier] network will be charged a termination rate of US\$0.12 per minute, an increase from the previous termination rate of US\$0.08 per minute.” Similarly, international calls terminated on wireless networks from February 1, 2003 are to be charged 16 cents rather than 12 cents. These rate increases are exactly the same as the increased international termination rates that these carriers have demanded from AT&T.

There appears to be no legitimate business reason why the Philippine carriers would agree to pay Globe all or most of their *entire* international termination rate when they send incoming international traffic to Globe’s local network. Under normal industry practice, a carrier operating an international gateway facility sending incoming international traffic to another carrier’s local network would be unwilling to pay more than the *local* interconnection rate. The Philippine carriers have agreed to pay Globe the much lower interconnection rate of 2.50 pesos [about US\$0.046] per minute for “metered calls terminating to an LEC network,” and international calls are terminated on a LEC network no differently than metered calls.

However, by agreeing to pay all or most of the entire international termination rate received from a foreign carrier when they send international traffic to Globe’s LEC network, the Philippine carriers effectively (1) agree on price floors for international traffic, and (2) agree that the international termination rates they charge for traffic terminated on Globe’s network will not undercut the international termination rates charged by Globe. Put simply, these so-called “interconnection” agreements at these high rate levels are a mechanism to facilitate collusion and to prevent any “cheating” on the cartel price. *See, e.g., Interstate Circuit v. United States*, 306 U.S. 208 (1939) (unlawful conspiracy may be inferred where the economic interests of the parties would, but for a conspiracy, have induced the parties not to coordinate their actions).

There is no legal or regulatory requirement for such conduct in the Philippines, because Philippine regulations merely require *non-discriminatory* interconnection rates for local network access when “the same infrastructure and functionality” is used. A requirement for non-discrimination does not require all carriers

to charge the same rate. Indeed, the requirement for non-discrimination should rather mean that international traffic terminated on a local network would pay no more than the 4.6 cents paid by “metered” traffic, rather than the 12 cents agreed by the Philippine carriers with Globe. Furthermore, international termination rates are not regulated in the Philippines, as emphasized by the February 26, 2003 letter to the Commission from the Commissioner and Deputy Commissioner of the Philippines NTC, stating that “termination rates are private contractual arrangements entered into by carriers of their own free will.”

No legitimate business justifications

PLDT’s purported “legitimate and credible business justifications” for raising rates independently also do not withstand scrutiny.

PLDT’s primary justification (page 2) is that an increase in traffic volumes allegedly promised when the 8-cent rate was first adopted in 2000 “never materialized.” However, PLDT completely overlooks the fact that AT&T and PLDT entered into no fewer than *nine* subsequent agreements for 8-cent termination rates in the period between the first adoption of the 8-cent rate in July 2000 and when PLDT and the other Philippine carriers demanded a rate increase in November 2002.¹ Some of those agreements have included requirements concerning traffic volumes from AT&T, and some have not. Since July 2002, however, those agreements have merely required AT&T to make its “best efforts” to send PLDT certain traffic volumes, and AT&T’s traffic to PLDT has *exceeded* all of those volumes. Furthermore, as AT&T showed at page 14 of its reply comments in this proceeding, neither PLDT nor any other Philippine carrier has any legitimate complaint concerning U.S. outbound traffic volumes, which have increased five-fold since 1996, and have resulted in Philippine carriers receiving greater settlements payments in 2001, after PLDT lowered its rate to 8 cents, than in 1996, when the average settlement rate was more than 50 cents.

PLDT also asserts (page 2), just as Digitel has done (at page 8 of its comments), that the rate increase is “forced” by “the drop in the exchange rate between the Philippine peso and the American dollar.” However, that purported rationale also fails to hold water because AT&T and other U.S. carriers make settlements payments to PLDT and other Philippine carriers in *dollars*, not in Philippine pesos. Consequently, the devaluation of the Philippine peso makes the 8-cent rate much more valuable to PLDT than before, since at the exchange rate of 20 pesos to the dollar referenced in PLDT’s letter 8 cents is worth 1.6 pesos, while at the exchange rate of 54 pesos to the dollar also referenced in PLDT’s letter, 8 cents is worth 4.32 pesos.

¹ Those separate agreements were for the periods October through December 2000, January through March 2001, April 2001, May through June 2001, July through October 2001, November 2001 through March 2002, April through June 2002, July through August 2002, and September through October 2002.

Notably, PLDT again makes no effort to demonstrate that the increase is required by increased termination costs -- the only justification recognized by Commission rules for a termination rate increase. PLDT's claims (page 2) that the increase is necessary "to maintain and support its network" and "justified under its Cost Manual" are irrelevant. The burden on PLDT is to show cost justification for a 50 percent increase in the freely negotiated 8-cent rate in place since July 2000 and reaffirmed in no fewer than nine separate rate agreements between PLDT and AT&T since then, and PLDT has not even begun to make that showing. Equally beside the point is any "approval" by the Philippine regulator, which by PLDT's own admission has no "power or authority" to mandate these rates and also has provided no cost justification for the increase.

Globe's attempts in its reply comments (pages 4-5) to explain the Philippine carriers' concerted rate-setting conduct are equally unsuccessful. Any similarities in the cost structures of the smaller Philippine carriers are irrelevant, because there is no evidence that these increases, or the new rates, bear any relationship to costs. Globe's further claim (page 5) that the smaller Philippine carriers must charge the same international rates as PLDT because they "compete with PLDT" is also unpersuasive. New entrant carriers seeking to compete with an incumbent like PLDT to terminate inbound international traffic normally do so by offering lower rates, not by raising rates in lock step with the incumbent.

Other issues

The factors alleged by PLDT (page 4) to provide "strong indicia" of competitive performance in the Philippines do nothing of the kind. The new 12-cent termination rate that is cited by PLDT to this effect in fact demonstrates the absence of market forces, since market forces move rates closer to cost rather than in the opposite direction as has occurred here with the 50 percent rate increase. As AT&T showed in its reply comments (p. 13), the 12-cent rate is four times greater than AT&T's rates to Australia, Malaysia, New Zealand and Singapore, and three times greater than AT&T's rates to Hong Kong, Japan, South Korea and Taiwan. Similarly, the mere presence of new carriers in the Philippines is also insufficient to show competitive performance because there can be no such outcome when the new carriers engage in concerted action with the dominant supplier, as they have done here.

PLDT fails to show that AT&T may terminate traffic in the Philippines at less than 12 cents through the rates available through Arbinet. As described in AT&T's reply comments (page 4, n.5), alternative routes have entailed increased cost for AT&T as well as, frequently, reduced quality. Indeed, AT&T believes that its average cost of termination in the Philippines through alternatives routes since February 1 has exceeded the average cost it would have incurred at the 12 cent rate required by the Philippine carriers.

PLDT severely mischaracterizes (page 5) the AT&T Schedule Rate Change Notification referred to on page 10 of the comments by Digitel. That rate change

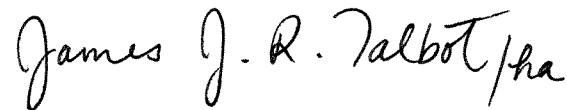
notification is for AT&T's business wholesale rates, for which Digitel is one of AT&T's customers. PLDT thus confuses the termination rates charged by Philippine carriers for call termination in the Philippines, for which AT&T is the customer, with the rates that AT&T charges its business wholesale customers for U.S.-Philippine calls. Because the actions by the Philippine carriers have increased AT&T's costs for call termination in the Philippines, AT&T has been forced to increase its business wholesale rates, but it has not thus far raised consumer rates on this route, as stated in AT&T's reply comments (p. 19, n.43).

Globe's so-called "reverse whipsawing" by AT&T (pages 5-6), and Bayantel's similar claim (p. 1), is merely the normal operation of market forces. Globe confuses the difference between the abuse of market power at the foreign end of a U.S. international route to require the payment of increased above-cost subsidies, which is the whipsaw conduct engaged in here, and the rate reductions that may result from the presence of multiple carriers at the foreign end where these are not obstructed by concerted conduct. The Commission's longstanding policy has been "to increase competition domestically *and internationally* in order to fulfill its statutory responsibilities under Section 1 of the Communications Act." *International Settlements Policy Reform*, IB Docket No. 02-324, (rel. Oct. 11, 2002), FCC 02-285, ¶ 15 (emphasis added). As the Commission emphasized in the *Benchmarks Order*, settlement rates in effectively competitive markets "tend to the level of total service long run incremental cost." *International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 129 (1997). Moreover, as noted above, Philippine carriers have benefited from rate reductions on this route since 1996, which have led to a five-fold increase in traffic volumes to the Philippines and continued high settlements payments by U.S. carriers. And contrary to Globe's illogical claim that foreign carrier rate increases assist the negotiation of lower rates, Commission long ago determined that the public interest in reducing rates to cost requires the denial of non-cost-based rate increases.

Lastly, after blocking AT&T traffic and with its network performance still not fully back to former levels, Digitel can hardly complain -- as it does in its reply comments -- that AT&T is sending less traffic for termination over its network. Because of the actions of the Philippine carriers in blocking AT&T's traffic and circuits, AT&T is required to send traffic to the Philippines chiefly by alternative routes, and it will continue to take all necessary actions to assist its customers in their communications to the Philippines.

Bayantel's claim (p. 1) that it is not blocking AT&T's traffic is belied by the Answer Seize Ratio ("ASR") data at Attachment C of AT&T's reply comments, which shows that Bayantel's ASR is normally above 50 percent, fell below 30 percent on January 31, 2003, and has been around 10 percent since February 6, 2003.

Respectfully submitted,



James J.R. Talbot

cc: James Ball, FCC
 Lisa Choi, FCC
 Patricia Cooper, FCC
 Anta Dey, FCC
 Claudia Fox, FCC
 Jennifer Manner, FCC
 Kathy O'Brien, FCC
 Barry Ohlson, FCC
 Jackie Ruff, FCC
 Bryan Tramont, FCC
 Samuel Feder, FCC
 Paul Margie, FCC
 Scott Shefferman, WorldCom
 Thomas Leuba, Sullivan & Cromwell
 Henry Goldberg, Goldberg, Godles, Wiener & Wright
 Patricia Paoletta, Wiley Rein & Fielding
 William Pamintuan, Digitel
 Gary Olivar, Bayantel.